IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4925 of 1990

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VRAJLAL LAVJIBHAI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MK VAKHARIA for Petitioner No(s).: 1 - 1.

MR PR ABICHANDANI, AGP for Respondent No(s).: 1.

MR HA RAICHURA for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 27/07/2005

ORAL JUDGMENT

In the present petition, the petitioners have challenged the order dated 25.4.90 passed by the Additional Chief Secretary (Appeals), Revenue Department, Government of Gujarat. By the said impugned

order, the said authority was pleased to set aside the order dated 3rd August 1981 passed by the Collector, Junagadh.

2. By an order dated 3rd August 1981, the Collector, Junagadh was pleased to pass order in favour of the petitioners and for the land bearing survey No.191 admeasuring 7 acres and 12 gunthas of village Vadal, the Collector was pleased to fix non-agricultural revenue at the rate of 3 paise per sq. meters operative from 1.8.81 onwards. It is the case of the petitioners that pursuant to the said order passed by the Collector, the petitioners also applied for being granted non-agricultural use of the land in question and such application was granted by the Taluka Development Officer under his order dated 25.5.82. It is also the case of the petitioners that pursuant to the permission granted by the authorities, the land in question was sub-plotted into as many as 70 plots and were sold to different purchasers as per the demand and by the year 1986, as many as 20 plots were sold and occupied by different purchasers. It is the case of the petitioners that on 6.8.88, the Deputy Collector issued a notice calling upon the petitioner to show cause as to why NA permission should not be cancelled. Such show cause notice was,

however, never adjudicated upon and till date no order has been passed cancelling NA permission. However, one Shri Kanji Pragji who, according to the petitioners, had no locus standi filed a revision application before the Government against the order dated 3rd August 1981 passed by the Collector. It is the case of the petitioners that such revision application was entertained by the Additional Chief Secretary after nearly 5 years of the order passed by the Collector and eventually, despite objections from the petitioners, by the impugned order dated 25th April 1990, the Additional Chief Secretary was pleased to set aside the order dated 3rd August 1981 passed by the Collector.

3. It is contended by the learned advocate Shri Vakharaia appearing for the petitioners that Shri Kanji Pragji had no locus standi to file the revision application before the State Government. He had no right, title or interest over the property in question. He had in no manner demonstrated his interest in filing the revision application. It was also contended that apparently, the Additional Chief Secretary had not exercised suo motu powers and therefore, entertaining the revision application of said Shri Kanji Pragji was not permissible. It was further contended that in any case,

the revisional powers under section 211 of the Bombay Land Revenue Code can be exercised within a reasonable period of time and after five long years of the order of the Collector, revisional powers could not have been exercised. It is also contended that in the meantime, the petitioners had substantially altered their position and number of persons were inducted on the land in question after sub-plotting the land. It is additionally contended that the Collector had passed the order in question after full inquiry and on valid reasons and on merits also the order passed by the Additional Chief Secretary cannot be sustained.

4. Learned AGP Mr.Abichandani appearing for respondent No.1 supported the order passed by the Additional Chief Secretary. Nobody appears for respondent No.2 at the time of hearing.

5. Considering the submissions made, it appears that the land in question was granted in favour of the petitioners by the erstwhile State of Junagadh and upon application made by the petitioners, the Collector had fixed the rate of land revenue to be operative from 1st August 1981. This order was never taken in suo motu revision by the State Government and only upon revision

application filed by respondent No.2, the impugned order came to be passed. From the aforesaid narration of facts, two things can be seen straightway. Firstly, respondent No.2 Kanji Pragji had no locus standi to file the revision application. He has not demonstrated his right, title or interest over the property in question nor has he been able to demonstrate in any manner how he was aggrieved by the order passed by the Collector. In that view of the matter and in view of the fact that the Additional Chief Secretary has neither stated nor apparently exercised powers suo motu, I find that the revision application was not maintainable. The reliance placed by the learned advocate for the petitioners on the decision of T.R.Associates v. State of Gujarat, 2000 (4) GLR 2969 is well founded.

6. Additionally, I also find that against the order passed by the Collector in the month of August 1981, the revision application came to be filed in April 1986. Notice must have been issued to the petitioners some time thereafter. Thus the petitioners were put to notice about the possibility of reversing the order passed by the Collector five years after the event. In the meantime, the petitioners had developed the land in question after obtaining necessary permission and also

had sold the sub-plots to interested buyers. Thus persons were put in possession and had spent considerable amount in purchase of plots and in that view of the matter, it was not possible for the Government to reverse the decision of the Collector without any explanation for the delay. Considering the above aspects of the matter, I do not think that the order passed by the Additional Chief Secretary can be sustained.

7. In the result, the petition is allowed and the order passed by the Additional Chief Secretary is quashed and set aside for the reasons stated above. Rule is made absolute accordingly with no order as to costs.

Direct service.

(Akil Kureshi, J.)

(vjn)